

## **SECURITIES CUSTODIAL AGREEMENT**

THIS SECURITIES CUSTODIAL AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_ ("Custodian"), \_\_\_\_\_ ("Pledgor"), and the South Dakota Division of Banking ("Secured Party").

### **SECTION 1. ACCEPTANCE OF PLEDGED SECURITIES.**

The Custodian agrees to accept written or facsimile transmitted instructions from Pledgor from time to time, to accept and hold securities ("Pledged Securities") in the Custodian's Safekeeping Account on behalf of the Secured Party, in the form of Exhibit A, as amended from time to time, subject to the provisions of this Agreement. The Custodian's Safekeeping Account shall identify the Pledged Securities as being held for the benefit of the Secured Party. Secured Party and Pledgor hereby authorize Custodian to utilize any book-entry system and third party depositories to the extent possible in connection with its performance hereunder. The parties agree that it is intended that Custodian act as a "securities intermediary" with respect to Pledged Securities, that all Pledged Securities shall be treated as "financial assets", and that the Secured Party is an "entitlement holder" as such terms are defined in the Uniform Commercial Code.

### **SECTION 2. CUSTODY RECEIPTS AND STATEMENTS.**

- a. Custodian shall deliver a Custody Receipt for the Pledged Securities to the Secured Party and Pledgor evidencing the Custodian's acceptance of the Pledged Securities pursuant to this Agreement.
- b. The Custodian shall periodically prepare and deliver to Pledgor and Secured Party statements evidencing the Pledged Securities held for the benefit of Pledgor.

### **SECTION 3. COLLECTION OF DIVIDENDS AND INTEREST.**

The Custodian shall have no obligation to the Pledgor or to the Secured Party to collect or to attempt to collect any interest, dividends, proceeds of sale or other monies due and collectible on or with respect to any of the Pledged Securities delivered to it hereunder. Notwithstanding the foregoing, the Custodian shall accept such interest, dividends, proceeds of sale and other monies as are tendered to it arising from such Pledged Securities and shall transfer those funds to the Pledgor, unless the Custodian shall not be liable to any person, including the Secured Party, for any interest, dividends, and proceeds of sale or other monies as are tendered directly to and received by the Pledgor.

#### **SECTION 4. WITHDRAWAL AND SUBSTITUTIONS OF PLEDGED SECURITIES.**

a. Pledgor authorizes Custodian to comply with all entitlement orders originated by Secured Party with respect to the Pledged Securities without further consent or direction from Pledgor or any other party.

b. Custodian shall not release, exchange, transfer, substitute or otherwise dispose of the Pledged Securities without the prior written consent of the Secured Party in the form of Exhibit A, as amended from time to time. The delivery to the Pledgor or its designee of any Pledged Securities withdrawn from safekeeping hereunder in compliance with this Section shall constitute a complete release and discharge of the Custodian from all responsibility for or liability to any person with respect to such Pledged Securities.

#### **SECTION 5. DEFAULT BY PLEDGER.**

If the Custodian has received written notice from the Secured Party that the Pledgor is in default in Pledgor's obligations to the Secured Party, Secured Party shall have full power and authority to direct Custodian to transfer the Pledged Securities to Secured Party, together with any accrued interest thereon.

#### **SECTION 6. FEES AND COMPENSATION.**

The Pledgor shall be responsible for payment of any fees of the Custodian for services rendered under this Agreement.

#### **SECTION 7. CUSTODIAN'S RESPONSIBILITIES AND LIABILITIES.**

a. The Custodian shall exercise reasonable care and diligence in the possession, retention and protection of the Pledged Securities delivered to it hereunder. The Custodian shall be required to perform only those duties specifically set forth in this Agreement and no additional duties, express or implied, shall be imposed on the custodian hereunder or by operation of law, including, but not limited to, the duties of a trustee under a trust indenture. The Custodian makes no other representations or warranties of any kind with respect to the safekeeping services to be provided hereunder, except as specifically set forth in this Section.

b. The Custodian shall at all times be entitled to act upon the instructions and authorizations of appropriate officers of the Pledgor and the Secured Party in the performance of its duties hereunder, and shall at all times be entitled to rely upon the accuracy and integrity of all such certificates and representations made to the Custodian. No duty of independent investigation of any authorization, certification or representation made by the Pledgor or Secured Party shall be imposed on the Custodian under this Agreement or by operation of law.

c. Neither the Custodian nor any of its directors, officers, employees or agents shall be liable for any loss resulting from any action taken or omitted hereunder unless such loss is proximately caused by its or their negligence or willful misconduct. Any liability on Custodian's part for loss or damage to such Pledged Securities shall be limited to the market value thereof on the date of discovery of such loss or the date on which the loss occurred, whichever amount shall be greater. Custodian shall not be liable for consequential damages.

## **SECTION 8. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF PLEDGOR.**

The Pledgor represents, warrants, and covenants as follows:

a. The Pledged Securities held hereunder are genuine, in bearer form or are otherwise freely negotiable.

b. Pledgor owns the Securities in the Custodian's Safekeeping Account free and clear of all liens, claims, security interests and encumbrances, except those granted to Secured Party and Pledgor has rights in the Pledged Securities sufficient to allow it to grant a security interest therein pursuant to this Agreement.

c. Pledgor has taken all necessary corporate action in order to enter into this Agreement and to perform its duties hereunder. Execution, delivery and performance of this Agreement will not violate any law, rule, or order to which the Pledgor may be subject, nor will it violate any contract, agreement, or obligation to which the Pledgor may be bound.

d. The Pledgor shall indemnify, defend and hold harmless the Custodian and its directors, officers, employees and agents from and against any liabilities, claims, demands, obligations or contentions asserted by any person, including, but not limited to, the Secured Party, and all costs and expenses, including, but not limited to, attorney's fees (whether or not suit is instituted) arising out of or in any way incident or related to the safekeeping services provided for hereunder, provided, however, that no duty or indemnity shall exist when the liabilities, costs or expenses are incurred by reason of Custodian's gross negligence or willful misconduct under the terms of this Agreement.

## **SECTION 9. TERMINATION.**

This Agreement and the duties and responsibilities hereunder of the parties hereto shall remain in effect until the occurrence of one or more of the following events:

a. Delivery by Custodian to Pledgor and Secured Party of written notice of Custodian's resignation as Custodian hereunder, such resignation to be effective thirty (30) days following such delivery, at which time Custodian shall deliver all Pledged Securities in its possession hereunder as directed by written instruction signed by both the Pledgor and the Secured Party.

b. Delivery of written notice signed by Pledgor and Secured Party to Custodian terminating this Agreement, such termination to be effective thirty (30) days following delivery, at which time Custodian shall deliver all Pledged Securities in its possession hereunder as directed by written instruction signed by both the Pledgor and the Secured Party.

#### **SECTION 10. NOTICES.**

Any and all notices required by this Agreement shall be by facsimile transmission or in writing, delivered by hand or shall be mailed by first-class, registered, certified mail; postage prepaid, or express mail and delivered to the following addresses:

If to the Pledgor:  
(Pledgor name and address)

ATTN: Securities Safekeeping

If to the Custodian:

(Custodian name and address)

ATTN: Securities Safekeeping

If to the Secured Party: South Dakota Division of Banking  
217 ½ West Missouri  
Pierre, SD 57501

ATTN: \_\_\_\_\_

#### **SECTION 11. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement and understanding of the parties and may not be altered, modified or rescinded except upon the express written consent of all parties hereto.

#### **SECTION 12. APPLICABLE LAW.**

This Agreement is made and executed within the State of the Secured Party and its terms and provisions shall be interpreted and construed in accordance with the laws of said state.

#### **SECTION 13. SEVERABILITY.**

In the event that any provision of this Agreement shall be held or declared illegal or invalid for any reason, then the remaining provisions hereof shall not be affected thereby, but shall be fully severable, and shall be enforceable according to the terms thereof.

#### **SECTION 14. SUCCESSORS.**

This Agreement shall inure to the benefit, apply to and be binding upon any successors of the parties hereto.

#### **SECTION 15. ASSIGNMENT.**

None of the parties shall assign this Agreement or any of the duties imposed hereunder without first obtaining the written consent of all the parties.

**IN WITNESS WHEREOF**, the Pledgor, Secured Party and the Custodian have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

**CUSTODIAN:** (Name)

By: \_\_\_\_\_

Typed Name:

Title:

**SECURED PARTY:** South Dakota Division of Banking

By: \_\_\_\_\_

Typed Name:

Title:

**PLEDGOR:** (Pledgor name)

By: \_\_\_\_\_

Typed Name:

Title: